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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RUBEN HENRY PALACIOS,

Defendant and Appellant.

E066448

(Super.Ct.No. FSB1402699)

OPINION

APPEAL from the Superior Court of San Bernardino County. Katrina West,
Judge. Affirmed.

Ruben Henry Palacios, in pro. per.; and Beatrice C. Tillman, under appointment
by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

FACTUAL AND PROCEDURAL HISTORY

A. PROCEDURAL HISTORY

On June 4, 2014, a felony complaint charged defendant and appellant Ruben Palacios with inflicting corporal injury on a spouse/cohabitant (Pen. Code, § 273.5, subd. (a); count 1).

On June 12, 2014, pursuant to a negotiated plea agreement, defendant entered a guilty plea to count 1. The plea agreement specified that defendant would be granted three years of formal probation and would serve 180 days in county jail.

On July 11, 2014, defendant was sentenced pursuant to the plea agreement, with multiple probation terms imposed, including: reporting to the probation officer in person immediately upon release from custody and thereafter once every 14 days or as directed (term 3); cooperating with the probation officer in a plan of rehabilitation and following all reasonable directives of the probation officer (term 4); and successfully completing a domestic violence program of 52 weeks and submitting proof of completion by November 1, 2015 (term 18).

On July 29, 2014, a petition to revoke defendant's probation was filed. It alleged that defendant failed to report to the probation officer upon his release from custody. On December 10, 2014, defendant admitted the violation. The court revoked defendant's probation and reinstated probation with modifications to term 1—increase county jail from 180 days to 365 days, and award 75 days actual credit plus new Penal Code section 4019 credit. Upon release, defendant was ordered to report to probation within 48 hours.

On December 4, 2015, defendant denied the allegations in the July 30, 2015, petition for revocation. On February 5, 2016, defendant admitted violating his probation, but withdrew his admission at a hearing on March 3, 2016.

A *Vickers*¹ hearing was held on July 8, 2016. After hearing the evidence, the trial court found that defendant had violated the terms of his probation by (1) failing to report as directed, (2) failing to cooperate with probation, and (3) failing to attend a 52-week domestic violence program. The court sentenced defendant to the upper term of four years in state prison and awarded 805 days credit.

On July 12, 2016, defendant filed a timely notice of appeal, based on the sentence or other matters occurring after the plea.

B. FACTUAL HISTORY

At the *Vickers*'s hearing, the probation officer assigned to defendant's case, Renita Toleston, testified. Officer Toleston testified that defendant had reported to her sometime around the end of March 2015 to early April 2015, and she had discussed the terms and conditions of his probation with defendant. Defendant notified the probation officer that he was homeless, and Officer Toleston advised defendant that there were resources for homeless probationers, and that defendant must report every week on Tuesdays, between 8 a.m. and 12 p.m. The officer also directed defendant to enroll in a domestic violence program by April 30, 2015.

¹ *People v. Vickers* (1972) 8 Cal.3d 451.

On May 5, 2015, defendant provided Officer Toleston with proof of enrollment in a domestic violence program. After May 5, defendant failed to report to the officer again.

In December 2015, Officer Toleston visited defendant at Central Detention Center; defendant acknowledged that he failed to report to probation as directed and stopped attending his domestic violence classes. Defendant told the officer that he failed to report because he was homeless and did not have the resources. The officer had previously notified defendant of the resources available to homeless probationers. Defendant did not seek assistance from his probation officer.

DISCUSSION

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues, and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. On November 16, 2016, defendant filed a two-page handwritten brief with attached exhibits. In his personal brief, defendant essentially argues that the trial erred in sentencing him to the upper term on his underlying offense because he violated the terms of his probation “only [and] did not pick up a case or new charge.” Defendant’s argument is without merit.

In this case, the trial court found that defendant violated the following terms of his probation: (1) term 3, defendant failed to report to his probation officer; (2) term 4,

defendant failed to avail himself to services; and (3) term 18, defendant admitted that he stopped attending domestic violence classes and failed to submit proof of completion by November 1, 2015. Based on these violations and the probation officer's recommendations, the trial court revoked defendant's probation and sentenced defendant to the upper term of four years on his underlying offense. (See *People v. Scott* (1994) 9 Cal.4th 331, 354; Cal. Rules of Court, rule 4.421.) When defendant pled guilty, he understood that the court may impose the upper term of four years.

“[Defense Counsel]: You understand that at that [probation revocation] hearing . . . the People have to prove by a preponderance that you violated probation, and if they do so, it is then up to the judge to decide whether to reinstate your probation, whether to impose the low term of two years, the midterm of three years, or the upper term of four years [in] state prison. And it will be only her decision at that point. [¶] You understand that?

“[Defendant Palacios]: Yes.

“[Defense Counsel]: And you understand she could go with the upper term of four years, rather than the three that we had agreed on [during] our conference of February 5?

“[Defendant Palacios]: Yes.” (All caps. omitted.)

Based on the above, we find that the trial court properly sentenced defendant to the upper term of four years.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

RAMIREZ
P. J.

SLOUGH
J.